Supreme Court, U.S.
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No. 04-456

In The

Supreme Court of the United States

JUSTIN KING,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The First Circuit Court Of Appeal Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When police officers receive an allegation of criminal activity from two anonymous callers (who may or may not be the same person), does corroboration that is limited to the suspect's name, address, vehicle, and prior conviction, establish, *without more*, probable cause to search a home for evidence of alleged criminal activity? Could a reasonable magistrate plausibly conclude that there was a "fair probability" that evidence of crime was located in a home based on such little information?

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The judgment of the trial court granting Justin King's motion to suppress appears in the Appendix to the Petition (hereinafter Pet. App.) at 2. The judgment of the First Circuit Court of Appeal, *State v. King*, 2004 KW 0254 (La.App. 1st Cir. 4/2/04) (unpublished opinion), reversing the trial court, appears at Pet. App. 1. The judgment of the Louisiana Supreme Court denying Justin King's application for writs is reported at *State v. King*, 04-1111 (La. 7/2/04), 877 So.2d 145, and appears at Pet. App. 10.

JURISDICTION

The First Circuit Court of Appeal of Louisiana entered a judgment reversing the trial court's ruling granting Justin King's motion to suppress on April 2, 2004. Justin King's timely application for writs in the Supreme Court of Louisiana was summarily denied on July 2, 2004, in a six to one decision. The instant petition for writ of certiorari has been filed within 90 days of that July 2 denial. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1257(a), which authorizes this Court to review "[f]inal judgments . . . by the highest court of a State . . . where any . . . right . . . is specially set up or claimed under the Constitution."

This case presents a final judgment for review. The state trial court granted King's motion to suppress. The intermediate appellate court reversed the trial court on the state's application for supervisory writs. The Louisiana Supreme Court denied King's application for writs to reinstate the trial court's ruling. Accordingly, although Justin King has yet to be tried and convicted, he has

exhausted all avenues for review of his Fourth Amendment claim in the State of Louisiana.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On October 9, 2002, Detective Chad McGovern of the Baton Rouge Police Department received an anonymous tip alleging that a person named Ed Avant was growing marijuana in a closet at his residence at 8348 Highland Road; was in possession of steroids and GHB; and had a safe containing rifles, handguns, and bombs.[1] The caller gave a physical description of Avant and his truck and said that Avant had two roommates and a previous arrest for assault.[2] The caller said that he did not personally know Avant[3] (a fact that Detective McGovern failed to include in

[1] Detective McGovern's Affidavit for Search Warrant: 10/11/2002 (Pet. App. at 32).

[2] *Id.*

[3] Crime Stopper's report received by Detective McGovern – dated: 10/5/2002 (Pet. App. at 86).

his affidavit for the search warrant) and, according to Detective McGovern, the informant gave no information that could be used to establish his truthfulness or reliability.[4]

Through investigation and surveillance, police were able to determine that a man named Ed Avant did live at 8348 Highland Road and he owned a truck like the one described by the caller.[5] Also, the police observed a man fitting Avant's description at the given house and a truck similar to the one described by the caller parked at the house.[6] Additionally, police determined that Avant had a previous arrest for Assault, Possession of Firework Pyrotechnics, and Disturbing the Peace/Fighting from 1999.[7] During the surveillance, police observed no suspicious activity.[8]

Then, on October 11, 2002, Lt. Chris Rushing of the Baton Rouge Police Explosives Unit received an anonymous tip alleging that a person named Ed Avant was in possession of six pipe bombs and that he intended to bomb a local middle school.[9] The caller also gave Avant's address, a description of his car, and said that Avant was growing

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[4] McGovern testimony from Motion to Suppress Hearing (Pet. App. at 43-45).

[5] Detective McGovern's Affidavit for Search Warrant: 10/11/2002 (Pet. App. at 32).

[6] *Id.*

[7] *Id.*

[8] McGovern testimony from Motion to Suppress Hearing (Pet. App. at 45-48).

[9] Detective McGovern's Affidavit for Search Warrant: 10/11/2002 (Pet. App. at 32).

marijuana in his residence.[10] Lt. Rushing then contacted Detective McGovern. Other than pulling Avant's arrest record, Lt. Rushing did nothing to corroborate the information provided by the anonymous caller.[11]

After being advised of the second anonymous call, Detective McGovern drafted a search warrant for 8348 Highland Road and took it to the duty judge, Judge Wilson Fields. Detective McGovern advised Judge Fields that the warrant was based on two anonymous tips. (Pet. App. at 56-57). Judge Fields advised the Detective that he would not sign the warrant until he had researched the probable cause issue.[12] When Judge Fields did not quickly contact the police with a response to their warrant request, the police found Judge Erwin, an off-duty judge.[13] Judge Erwin signed the warrant and, shortly thereafter, the police went to 8348 Highland Road to execute it.[14] Upon arrival, the

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[10] *Id.*

[11] Rushing's testimony from Motion to Suppress Hearing (Pet. App. at 61-63).

[12] McGovern testimony – Motion to Suppress Hearing (Pet. App. at 56-57).

[13] McGovern testimony – Motion to Suppress Hearing (Pet. App. at 55-56).

[14] The State has never argued that the evidence seized pursuant to the challenged warrant is admissible under the "good faith" exception to the exclusionary rule announced in *United States v. Leon*, 468 U.S. 897 (1984). Accordingly, petitioner has not addressed this issue in the argument. However, to the extent this Court feels *Leon* applies to the case at bar, petitioner directs the Court to the Leon majority's statement that in making the determination of when an officer's reliance upon a defective warrant is "objectively reasonable," "all of the circumstances – including whether the warrant application had previously been rejected by a different magistrate – may be considered." *U.S. v. Leon* at 923, footnote 23. Because Judge Wilson advised Detective McGovern that his warrant application raised issues requiring

(Continued on following page)

police battered down the door with a battering ram. They searched the house and seized approximately 4 grams of marijuana, one bottle of steroids, two pipes with caps and powder (which were not bombs because they contained no ignition device),[15] and $303.00 in cash.[16] Ed Avant and his roommate, Justin King, were present at the search and arrested. Justin King was charged with Possession of Marijuana and with Possession of a Dangerous Weapon with a Controlled Dangerous Substance.

Prior to trial on the resulting charges, Justin King filed a motion to suppress the evidence seized at his home because the search warrant lacked probable cause and was in violation of the Fourth and Fourteenth Amendments to the United States Constitution.[17] The trial court held an evidentiary hearing and granted the motion to suppress.[18] The court found that the affidavit filed by the police officers in support of their application for a search warrant failed to provide a sufficient basis on which a neutral and detached magistrate could conclude that there was probable cause to issue the warrant. Specifically, the officer's application for a warrant was based on information supplied by a completely anonymous informant. Although the police conducted an independent investigation on the

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research, the "good faith" exception to the exclusionary rule does not apply. A reasonable officer would have waited for Judge Wilson's answer rather than shop for an alternate judge unconcerned with bothersome "research."

[15] Rushing's testimony from Motion to Suppress Hearing (Pet. App. at 65-68).

[16] Return of Search Warrant – dated: 10/23/2002 (Pet. App. at 69).

[17] Justin King's Motion to Suppress (Pet. App. at 7).

[18] Trial Court's Ruling on Justin King's Motion to Suppress (Pet. App. at 2).

basis of the information provided, the court concluded that the information gathered by the officers merely corroborated the suspect's name, address, vehicle, and record of a prior arrest. The warrant, therefore, should never have issued.

The state sought writs from the ruling granting the motion to suppress. On April 2, 2004, the First Circuit Court of Appeal of Louisiana summarily reversed.[19] Justin King then filed a petition for review by the Louisiana Supreme Court. (Pet. App. at 11). The Court denied writs on July 2, 2004. (Pet. App. at 10). The instant petition to the United States Supreme Court follows.

ARGUMENT

In analyzing whether the search warrant executed on Justin King's residence at 8348 Highland Road was constitutional, we start from the bedrock premise that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation." U.S. Const. amend IV. "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505 (1961).

As Judge Johnson correctly noted in his ruling granting Justin King's motion to suppress, the weakness in the probable cause showing here, is twofold: the anonymous nature of the tipster (or "tipsters" – if we speculate that the two calls came from different people – a fact never

[19] Ruling of First Circuit Court of Appeal (Pet. App. at 1).

established by the state) and the unremarkable quality of the information provided. If the police do not know who is providing the information, they obviously cannot check the informant's prior track record for accuracy or evaluate the basis of his or her knowledge. Moreover, the detail provided about Ed Avant – his physical description, his address, his vehicle, and his prior arrest for assault – was not so great or unique as to provide evidence of "inside information" or a close relationship to Ed Avant; and Avant's activities, independently witnessed by investigating officers, were not remotely suspicious.[20]

To point up how weak the warrant application was in this case – and the correctness of the trial court's ruling – a comparison with the controlling national precedent, *Illinois v. Gates*, 462 U.S. 213 (1983), is instructive. The issue in *Gates* was whether the police, based on the anonymous letter and subsequent investigative work, had established probable cause for a warrant to search the defendants' automobile and residence. This Court adopted a "totality of the circumstances" test for determining if an informant's tip is sufficient to provide probable cause for a warrant. The issuing magistrate should take a "commonsense" approach based on a "totality of the circumstances" in determining whether probable cause exists in which the informant's "veracity", "reliability" and "basis of knowledge" are highly relevant. *Id.* at 238. Additionally, the Court held that "the duty of the reviewing court is simply to ensure that the magistrate had a 'substantial basis for determining that probable cause existed.'" *Id.* at 238-39. In *Gates*, the court found that the defendants' conduct –

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[20] McGovern testimony from Motion to Suppress Hearing (Pet. App. at 45-48).

flying to Florida and then driving their own car back to Chicago less than 24 hours later – was suggestive of drug trafficking and may have been sufficient to establish probable cause for a search even without the anonymous tip. Additionally, corroboration of the tipster's predictions of specific legal behavior, such as the trip to Florida, suggests reliability and makes it likely that he was telling the truth about the illegal behavior as well. Finally, the fact that the tipster knew about the Gates' somewhat unusual travel plans indicates that he would have had sufficient "basis of knowledge" to also be aware of their illegal activities. In other words, the predictive nature of the letter and corroboration of many of its innocent but unusual predicted details suggested, under a "totality of the circumstances" test, that the tipster's basis of knowledge and reliability were sufficient to provide the magistrate with probable cause for the search warrants.

In the case at bar, unlike *Gates*, there was no predictive element and no corroboration of the suspect's future actions. Although the "second" anonymous call did predict that a person named Avant was going to bomb a middle school, this is a bald allegation of future criminal behavior, not a detail supporting the caller's prediction of future behavior. It must not be overlooked that it was the predictive aspect of the tip in *Gates* – coupled with police corroboration – that showed the informant had a sufficient basis of knowledge and reliability to provide probable cause

Similar to *Gates,* the police here were able to corroborate the aspects of the tip that identified the suspect. The police found that Avant listed the residence given by the informant as his on his identification card, that someone fitting Avant's description was observed at the residence,

that Avant owned a truck similar to the one described by the informant, and that such a truck was observed in the driveway of the residence.[21] But unlike *Gates*, the police stopped their investigation at this point, having merely obtained identifying and locating information generally available to the public at large. Identifying information *by itself*, however, is not even enough to establish reasonable suspicion for an investigatory stop, much less probable cause to search a home. In *Florida v. J.L.*, 529 U.S. 266 (2000), police received an anonymous tip saying that a black man with a plaid shirt would be on a particular corner with a concealed gun. Shortly after receiving this call, police found a black man with a plaid shirt standing on the named corner, conducted a *Terry* stop, searched the man, and found a gun. This Court held that corroboration of description and location of a suspect does not show that an informant has knowledge of "concealed criminal activity" and, therefore, would not provide reasonable suspicion for a *Terry* stop. *Id.* at 272. An anonymous tip must be "reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* It is hard to distinguish the instant case from *Florida v. J.L.*

As in *Florida v. J.L.*, the majority of the information from the tip that was corroborated by police in the case at bar served only to identify and locate the suspect. All of the information relating to Avant's description, the description of his car, and the location of his residence does little or nothing to establish that the informant was at all reliable in his "assertion of illegality." Also, none of the

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[21] Detective McGovern's Affidavit for Search Warrant: 10/11/2002 (Pet. App. at 32).

corroborated identifying information was suspicious in nature. Police witnessed no suspicious activity during their surveillance of Justin King and Ed Avant's home and no suspicious activity is mentioned in the search warrant.

Finally, it should be noted that in its brief to the First Circuit, the state argued that the fact that the second anonymous call accused Avant of planning to bomb a local middle school makes this case "comparable to an exigent circumstances case." This idea, however, is not reflected by the jurisprudence or good public policy. Exigent circumstances are an exception to the warrant requirement; they are not an exception to the requirement that police have probable cause to conduct a search of the home. In the case at bar, police did have a warrant.[22] The problem here is that this warrant was invalid because it was not supported by probable cause.

In any event, the state has not demonstrated that exigent circumstances were present. Bomb threats are common and police cannot be allowed to search any home based exclusively on the fact that an anonymous tipster claims that the occupants have bombs and will use them. Lt. Rushing, himself, stated that he receives prank bomb threats all the time and initially dismissed the call he received in this case as such a prank.[23] It is not reasonable that an individual should have his privacy invaded because an anonymous tipster – acting on some perverse impulse to harass or cause a panic – spices his tip with a

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[22] Petitioner reiterates his position on the applicability of the "good faith" exception noted *infra* at footnote 14.

[23] Rushing's testimony from Motion to Suppress Hearing (Pet. App. at 61).

bomb threat to encourage police action. Police must, at a minimum, investigate such claims, not passively accept them when the source is anonymous. If police do not have a reason to believe an informant before acting on his information, then the Fourth Amendment's requirement that the State possess probable cause before police break down the door of an individual's house is utterly meaningless.

CONCLUSION

As demonstrated by the holdings of this Court in *Gates* and *Florida v. J.L.*, it is absolutely imperative that police and the issuing magistrate have reason to trust and believe the information provided in a tip by an anonymous informant before a warrant can be issued upon probable cause. Nothing that the informant said in the tips and no information gathered by police in their investigation indicated that the informant was reliable in his "assertions of illegality" or that he would have knowledge of "concealed criminal activity." Much of the information provided by the informant and later corroborated by police could be found in a newspaper or phonebook. What is left does not indicate reliability or a basis of knowledge. Using the *Gates* "common sense" approach and considering the "totality of the circumstances", probable cause is not established by an anonymous tip with corroboration of only identifying information and no corroboration of predictive elements or anything else that would demonstrate the informant's basis of knowledge or reliability. In this case, the issuing judge simply did not have a substantial basis to determine that probable cause for the warrant existed. As a result, all evidence seized pursuant to this

warrant was obtained in violation of the Fourth Amendment to the United States Constitution. Accordingly, the Court of Appeals' ruling should be reversed and Judge Johnson's ruling suppressing the evidence should be reinstated.

Respectfully submitted,

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APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Judgment of the First Circuit Court of Appeal of Louisiana .....App. 1

Ruling of Trial Court on Justin King's Motion to Suppress .....App. 2

Justin King's Motion to Suppress .....App. 7

Judgment of Louisiana Supreme Court denying Justin King's Application for Writs .....App. 10

Justin King's Application to Louisiana Supreme Court for Writ .....App. 11

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA EX REL.
EDWARD AVANT & JUSTIN KING NO. 2004 KW 0254

VERSUS (Filed April 2, 2004)

STATE OF LOUISIANA

In re: State of Louisiana, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, Docket Number 02-03-481, Section VI.

BEFORE: WHIPPLE, KUHN AND MCDONALD, JJ.

WRIT GRANTED. The district court's ruling granting the defendant's motion to suppress hereby is reversed and this matter is remanded to the district court for further proceedings.

JMM
VGW
JEK

COURT OF APPEAL, FIRST CIRCUIT

/s/ Elizabeth D. Nauta
DEPUTY CLERK OF COURT
FOR THE COURT

STATE OF LOUISIANA

VERSUS

JUSTIN WILLIAM KING

DOCKET NUMBER:
02-03-481 SEC. VI

19TH JUDICIAL
DISTRICT COURT

PARISH OF
EAST BATON ROUGE

STATE OF LOUISIANA

RULING

This matter came before the court on December 3, 2003 for a ruling on a Motion to Suppress. This Court granted the Motion to Suppress on December 3, 2003.

The facts indicate that on October 9, 2002, Detective Chad McGovern of the Baton Rouge City Police Department received an anonymous Crimestopper's tip alleging that Ed Avant of 8348 Highland was cultivating marijuana in a closet at his residence; was in possession of steroids and GHB; and had rifles, handguns and bombs. The caller stated that he had no personal knowledge of Avant and he described Avant, his vehicle and stated that he had been previously arrested for assault.

Later, police determined that Ed Avant did in fact live at the address given and they observed a man resembling the description at the address given. Thereafter, on October 11, 2002, Lt. Chris Rushing of the Baton Rouge Police Explosives Unit received an anonymous tip alleging that Mr. Avant had intended to bomb a local middle school with pipe bombs that he had in his possession. The caller gave Avant's address, a description of his vehicle and stated that Avant had was cultivating marijuana and possessed six pipe bombs. Thereafter, Lt. Rushing contacted Detective McGovern and told him about the second anonymous

tip. Detective McGovern and told him about the second anonymous tip. Detective McGovern drafted a search warrant and Judge Michael Erwin signed the warrant. Police executed the search warrant and seized four grams of marijuana, one bottle of steroids, two pipe bombs, and Three Hundred and Three Dollars ($303.00) in cash. Subsequently, Ed Avant and his roommate Justin King were arrested.

The United States Supreme Court, in two early decisions, Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969), set forth a two prong test in determining if an affidavit based on allegations from an unnamed informant justifies issuance of a search warrant – (1) the affiant must state whether he believes the informant is trustworthy and (2) the affidavit must state the factual basis upon which the allegations is made or the tip must be factually corroborated by independent sources.

The Louisiana Supreme Court provided the following guidelines from the decision in State v. Paciera, 290 So. 2d 681 (La. 1971):

> The affidavit submitted to the magistrate may be based entirely on hearsay, but, if so, it must set forth underlying circumstances and details sufficient to provide a substantial factual basis by which the magistrate might find reliable both the informant and the information given by him. Factors, which support the credibility of an unidentified informant, include, prior accurate reports or any specific independent corroboration of the accuracy of the instant report. Factors which support credibility of the information reported include (a) direct personal observation by the informant, or (b) if the information came indirectly

> to the informant, the reasons in sufficient factual detail for the magistrate to evaluate and credit the reliability both of the indirect source an of the indirectly obtained information.

Further, in Illinois v. Gates, 462 U.S. 213, the United States Supreme Court held that a "totality of the circumstances" test would be used to determine reliability of informants and the issuing magistrate makes a practical common-sense decision whether, given all the circumstances before him, including the credibility of the informer and the basis of his knowledge, there is probable cause. However, even though the Louisiana Supreme Court has adopted the totality of the circumstance test we still consider the two prong test established in Aguillar v. Texas 378 U.S. 108 (1964), regarding "informer" information.

In this case, both officers received two separate anonymous tips about Ed Avant. Although the information given by the informants such as address and vehicle description was correct, the officers upon independent observation did not observe activity that would arouse suspicion or illegal activity that would corroborate the unidentified informants' information. Also, there were no factors to support the credibility or reliability of the informants such as prior accurate reports or corroboration of the instant report. An insufficient informant tip cannot be buttressed by more unsubstantial hearsay since that is the equivalent of underworld gossip. State v. Tassin, 343 So. 2d 681 (La. 1976).

According to State v. Williams, 338 So. 2d1365 (La. 1976), when an affidavit fails to establish the reliability of the informant and/or the basis for crediting the information, the affidavit may nonetheless be sufficient if

elsewhere in the application there is enough information to permit "the suspicions engendered by the informant's report to ripen into a judgment that a crime was probably being committed." This may be done by bolstering the tip with the independent observations by the officers which corroborate the informant's story or which reveal additional activity that reasonably arouses suspicion. Although the officers corroborated Avant's physical description, address and vehicle description through observation, this is insufficient to establish probable cause that illegal activity was taking place. In State v. Robertson, 721 So. 2d 1268 (La. 10/20/98), the court found no reasonable suspicion for an investigatory stop when there was no corroboration of information to demonstrate informant was reliable in his claim of illegal activity. Also, the officers were only given a vehicle description, location and the suspect's name. Mere identification and verification of physical address and identity is not enough to establish informant reliability.

This court recognizes that crime does not happen before the very eyes of a police office and they must frequently rely on tips from informants for leads. However, this does not mean that anybody can make an anonymous call which results in the search of a person's home. There must be independent corroboration to demonstrate that the claim of illegal activity was accurate.

This court cannot agree that the affidavit here at issue provided sufficient basis for an independent determination by a neutral judicial officer, that probable cause existed. There was insufficient corroborating evidence to determine the credibility and reliability of the two anonymous tips. Also, upon independent observation there was no evidence of suspicious activity to corroborate the

informants' claim. Therefore, the Court grants the Motion to Suppress.

READ, RENDERED AND SIGNED THIS 5 DAY OF ~~NOVEMBER~~ December, 2003 at Baton Rouge, Louisiana.

/s/ Donald Johnson
DONALD R. JOHNSON
JUDGE,
19TH JUDICIAL
DISTRICT COURT

STATE OF LOUISIANA	**NUMBER: 02-03-481** **SECTION: VI**
VERSUS	**19TH JUDICIAL DISTRICT COURT**
JUSTIN WILLIAM KING	**PARISH OF EAST BATON ROUGE** **STATE OF LOUISIANA**

MOTION TO SUPPRESS

NOW INTO COURT through undersigned counsel comes JUSTIN KING, defendant herein, who moves that all evidence seized as a result of a search conducted on or about October 11, 2002, at 8248 Highland Road, Baton Rouge, Louisiana, be suppressed from use at trial for the following reason:

1.

On or about October 11, 2002, at approximately 7:30pm, members of the Baton Rouge City Police Department and the Bureau of Alcohol, Tobacco, and Firearms, searched the residence located at 8348 Highland Road, Baton Rouge, Louisiana.

2.

The search was not justified by exigent circumstances, was not in hot pursuit, and was not conducted according to consent of any of the occupants of the residence. Instead, law Enforcement officers gained entry by forcing open the front door of the residence.

3.

The search was purportedly authorized by a search warrant; however, the warrant was improperly and/or illegal issued in that it was not based on reasonable or probable cause. All information in the possession of law enforcement officers used as a basis for the issuance of the warrant was received from "anonymous tips" and therefore, did not have sufficient reliability to justify the issuance of the search warrant.

4.

The search of the residence was conducted in violation of defendant's rights under the Constitution of the United States of America and the Constitution of the State of Louisiana and, therefore, all fruits of this search should be suppressed from use at trial.

WHEREFORE, Justin King moves this Court for an order suppressing the evidence seized as a result of the search on or about October 11, 2002 at 8348 Highland Road, Baton Rouge, Louisiana and disallowing the evidence to be used at the trial of this matter.

RESPECTFULLY SUBMITTED:

/s/ James E. Boren
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CERTIFICATE

I hereby certify that a copy of the foregoing motion has been mailed to Mr. Charles Grey, Assistant District Attorney, 222 St. Louis Street, Baton Rouge, Louisiana 70802, by United States mail, postage pre-paid on the 28th day of May, 2003.

/s/ James E. Boren
JAMES E. BOREN

ORDER

Considering the foregoing motion,

IT IS ORDERED that a hearing be held on the ___ day of _____, 2003 at __ o'clock am/pm, to determine if all evidence seized as a result of the search on or about October 11, 2002 at 8348 Highland Road, Baton Rouge, Louisiana should be suppressed from use at trial.

Thus ordered at Baton Rouge, Louisiana this ___ day of _____ 2003.

JUDGE DONALD JOHNSON

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS. NO. 2004-KK-1111

JUSTIN KING

IN RE: King, Justin; – Defendant; Applying for Supervisory and/or Remedial Writs, Parish of E. Baton Rouge, 19th Judicial District Court Div. B, Nos. 02-03-481; to the Court of Appeal, First Circuit, No. 2004 KW 254

July 2, 2004

Denied.

JTK

CDK

BJJ

JPV

CDT

JLW

CALOGERO, C.J., would grant the writ.

Supreme Court of Louisiana
July 2, 2004

/s/ Rai L. Dargle
Deputy Clerk of Court
For the Court

SUPREME COURT

STATE OF LOUISIANA

DOCKET NUMBER _____

STATE OF LOUISIANA

Respondent

VERSUS

JUSTIN KING

Applicant

A Criminal Proceeding

On a Supervisory Writ Application by the Defendant
From the Nineteenth Judicial District Court
Honorable Donald Johnson, Judge Presiding
Parish of East Baton Rouge, State of Louisiana
Trial Docket Number 02-03-481, Section VI
Court of Appeal Docket Number 2004-KW-0254
Honorables Whipple, Kuhn, and McDonald Presiding

WRIT APPLICATION ON BEHALF OF
JUSTIN KING – APPLICANT
FROM A DECISION BY THE COURT OF APPEAL,
FIRST CIRCUIT REVERSING THE
DISTRICT COURT'S DECISION GRANTING HIS
MOTION TO SUPPRESS EVIDENCE

Respectfully Submitted:

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Exhibit D – Rushings testimony from Motion to Suppress Hearing transcript p. 75-80

Exhibit E – Return of Search Warrant – dated: 10/23/2002

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Exhibit G – State's Court of Appeals writ, p. 5-8

Exhibit H – Ruling of First Circuit Court of Appeals

STATEMENT OF WRIT GRANT CONSIDERATIONS

This writ application should be granted because the First Circuit Court of Appeals erroneously interpreted the

Constitutions of the United States and Louisiana and the relevant jurisprudence by reversing the district court's suppression of the evidence in this case. Rule X. Section 1(a)(4).

STATEMENT OF THE CASE

On October 9, 2002, Detective Chad McGovern of the Baton Rouge Police Department received an anonymous Crime Stopper's tip alleging that one Ed Avant of 8348 Highland was cultivating marijuana in a closet at his residence; was in possession of steroids and GHB; and had a safe containing rifles, handguns, and bombs.[1] The caller gave a description of Avant and his truck and said that Avant had two roommates and a previous arrest for assault.[2] The caller said that he did not personally know Avant[3] (a fact that Detective McGovern failed to include in his affidavit for the search warrant) and, according to Detective McGovern, the informant gave no information that could be used to establish his truthfulness or reliability.[4]

Through investigation and surveillance, police were able to determine that a man named Ed Avant did live at the given address and that he owned a truck like the one

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[1] **Exhibit A** – Detective McGovern's Affidavit for Search Warrant: 10/11/2002

[2] *Ibid.*

[3] **Exhibit B** – Crime Stopper's report received by Detective McGovern – dated: 10/5/2002

[4] **Exhibit C** – McGovern testimony from Motion to Suppress Hearing – transcript page 40

described by the caller.[5] Also, the police observed a man fitting Avant's description at the given house and a truck similar to the one described by the caller parked at the house.[6] Additionally, police determined that Avant had a previous arrest for Assault, Possession of Firework Pyrotechnics, and Disturbing the Peace/Fighting from 1999.[7] During the surveillance, police observed no suspicious activity.[8]

Then, on October 11, 2002, Lt. Chris Rushing of the Baton Rouge Police Explosives Unit received an anonymous tip alleging the Ed Avant was in possession of six pipe bombs and that he intended to bomb a local middle school.[9] This caller also gave Avant's address, a description of his car, and said that Avant was growing marijuana in his residence.[10] Lt. Rushing then contacted Detective McGovern. Other than pulling Avant's arrest record, Lt. Rushing did nothing to corroborate the allegations made by the anonymous informant.[11]

Upon receipt of the second anonymous tip, Detective McGovern drafted the search warrant and took it to the duty judge, Judge Fields. Judge Fields refused to sign the

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[5] **Exhibit A** – Detective McGovern's Affidavit for Search Warrant: 10/11/2002

[6] *Ibid.*

[7] *Ibid.*

[8] **Exhibit C** – McGovern testimony from Motion to Suppress Hearing – transcript page 42

[9] **Exhibit A** – Detective McGovern's Affidavit for Search Warrant: 10/11/2002

[10] *Ibid.*

[11] **Exhibit D** – Rushings testimony from Motion to Suppress Hearing – transcript p. 76-77

warrant until he had researched the issue.[12] When Judge Fields did not quickly contact the police with a response to their warrant request, the police went to Judge Erwin, the off-duty judge at the time, at a restaurant on Highland Road.[13] Judge Erwin signed the warrant and, shortly thereafter, the police went to Avant's residence to execute the search warrant.[14] The police arrived at Avant's house and, without knocking, battered down the door with a battering ram. Police searched the house and seized approximately 4 grams of marijuana, one bottle of steroids, two pipes with caps and powder (which were not bombs because they contained no ignition device)[15], and $303.00 in cash.[16] Ed Avant and his roommate, Justin King, were arrested. King was charged with Possession of Marijuana and with Possession of a Dangerous Weapon with a Controlled Dangerous Substance. The defense filed a Motion to Suppress that was granted by Judge Johnson on November 5, 2003. The State then filed an Application for Supervisory Writs with the First Circuit Court of Appeals. On April 2, 2004, the First Circuit granted the

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[12] **Exhibit C** – McGovern testimony – Motion to Suppress Hearing – transcript p. 48

[13] **Exhibit C** – McGovern testimony – Motion to Suppress Hearing – transcript p. 48-49

[14] The State has never made the argument that this evidence should not be suppressed because of the "Good Faith" exception to the exclusionary rule, *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984), and, therefore, the defense does not address this issue in the argument. Nevertheless, the "Good Faith" exception would not apply here because the police officers that conducted the search obtained the search warrant through judge shopping. If this Court would like the defense to brief this issue, we would be happy to do so.

[15] **Exhibit D** – Rushings testimony from Motion to Suppress Hearing – transcript p. 78

[16] **Exhibit E** – Return of Search Warrant – dated: 10/23/2002

writ application and erroneously reversed Judge Johnson's order suppressing the evidence.[17]

ASSIGNMENT OF ERROR

1. The First Circuit Court of Appeals erroneously reversed the District Court's ruling granting the defendant's motion to suppress.

SUMMARY OF THE ARGUMENT

A tip from an anonymous informant can not, by itself; establish probable cause for a search warrant. Police must corroborate enough of the information given by the informant to be able to believe that the he is telling the truth about the rest of it. Under *Illinois v. Gates,* 462 U.S. 213 (1983), the court should use "common-sense" in determining if probable cause has been established and consider things such as the informant's "veracity" or "reliability", and "basis of knowledge". *Gates* at 238. Here, neither the informant's "veracity", "reliability", nor "basis of knowledge" was sufficiently established to provide probable cause for a search warrant. The only information from the tips that was corroborated by police was locating and identifying information. Corroboration of locating and identifying information from an anonymous tip is not, by itself, enough to establish reasonable suspicion for an investigatory stop because an informant's knowledge of such information does not demonstrate the informant's reliability or knowledge of concealed criminal activity. Since the tip was not sufficiently corroborated to provide reasonable suspicion, then it certainly does not establish

[17] **Exhibit H** – Ruling of First Circuit Court of Appeals

probable cause for a search warrant. Knowledge of such information does not demonstrate the informant's reliability or knowledge of "concealed criminal activity". Finally, the fact that police received two anonymous tips adds nothing to the analysis because it is simply not reasonable to use one anonymous tip to corroborate another. Police had no reason to believe or trust the tipster in this case and, therefore, probable cause was not established. As a result, the evidence seized pursuant to the invalid search warrant should be suppressed.

ARGUMENT

I. THE SEARCH WARRANT IS INVALID BECAUSE THE TWO ANONYMOUS TIPS WERE NOT SUFFICIENTLY CORROBORATED TO ESTABLISH PROBABLE CAUSE.

The Fourth Amendment to the United States Constitution and Article 1, §5 of the Louisiana Constitution require probable cause for a valid search warrant to be issued. In Louisiana, evidence seized in violation of an individual's constitutional rights may not be used in court as evidence against anyone. In *Illinois v. Gates,* 462 U.S. 213 (1983), the U.S. Supreme Court established a "totality of the circumstances" test for determining whether probable cause for a search or seizure exists based on an anonymous tip. In *Gates,* police received an anonymous letter stating that Mr. and Mrs. Gates were drug dealers. The letter gave the defendants' names, the location of their home, and details of their drug trafficking habits. Additionally, the writer of the letter predicted that Mrs. Gates would be driving to Florida on a specific date (May 3) and that Mr. Gates would fly down a few days later to drive the car back to Chicago with over $100,000 worth of drugs in

the trunk. Through their investigation, police discovered that a Leon Gates did live at the address specified in the letter. Additionally, Mr. Gates did fly to Florida, check into a room registered in the name of his wife, and then leave the next morning with an unidentified woman. The car he was driving was registered in his name and the interstate that he took was one that would take him to Chicago. Based on this information, the police obtained a warrant to search the Gates' residence and their car. Upon their return home, the Gates' car was searched and 350 pounds of marijuana was discovered in the trunk. Additional drugs and weapons were found in the Gates' residence.

The issue in *Gates* was whether the police, based on the anonymous letter and subsequent investigative work, had established probable cause for a warrant to search the defendants' automobile and residence. The Supreme Court adopted a "totality of the circumstances" test for determining if an informant's tip is sufficient to provide probable cause for a warrant. The issuing magistrate should take a "common-sense" approach based on a "totality of the circumstances" in determining whether probable cause exists in which the informant's "veracity", "reliability" and "basis of knowledge" are highly relevant. *Id.* at 238. Additionally, the Court held that "the duty of the reviewing court is simply to ensure that the magistrate had a 'substantial basis for determining that probable cause existed.'" *Id.* at 238-39. In *Gates,* the court found that the defendants' conduct – flying to Florida and then driving their own car back to Chicago less than 24 hours later – was suggestive of drug trafficking and may have been sufficient to establish probable cause for a search even without the anonymous tip. Additionally, corroboration of the tipster's predictions of specific legal behavior, such as

the trip to Florida, suggests reliability and makes it likely that he was telling the truth about the illegal behavior as well. Finally, the fact that the tipster knew about the Gates' somewhat unusual travel plans indicates that he would have had sufficient "basis of knowledge" to also be aware of their illegal activities. In other words, the predictive nature of the letter and corroboration of many of its innocent but unusual predicted details suggested, under a "totality of the circumstances" test, that the tipster's basis of knowledge and reliability were sufficient to provide the magistrate with probable cause for the search warrants.

A. No Predictive Elements of the Anonymous Tip were Corroborated by Police to Establish Probable Cause.

Unlike *Gates,* the tip in our case was not predictive in nature. Though the informant did predict that Avant was going to bomb a middle school in the second tip, that information was not corroborated. It was the predictive aspect of the tip in *Gates* that showed the informant had a sufficient basis of knowledge and reliability to provide probable cause. Also, this Court, in *State v. Robertson,* 721 So2d. 1268 (1998), held that "information concerning defendant's future actions" are "an important basis for forming reasonable suspicion". *State v. Robertson* at 1270. In the case at bar, there was no predictive element and no corroboration of the suspect's future actions. As a result, probable cause, if it existed, would have had to be established in another way.

B. Corroboration of Identifying Information from an Anonymous Tip will not even Establish Reasonable Suspicion for an Investigatory Stop, much less Probable Cause for a Search Warrant.

Information that merely identifies and/or locates a suspect is not enough to provide a magistrate with probable cause for a warrant. In the case at bar, like *Gates,* the police were able to corroborate the aspects of the tip that identified the suspect. The police found that Avant listed the residence given by the informant as his on his identification card, that someone fitting Avant's description was observed at the residence, that Avant owned a truck similar to the one described by the informant, and that such a truck was observed in the driveway of the residence.[18]

This identifying information, however, is not even enough to establish reasonable suspicion for an investigatory stop. In *Florida v. J.L.*, 529 U.S. 266 (2000), police received an anonymous tip saying that a black man with a plaid shirt would be on a particular corner with a concealed gun. Shortly after the receiving this call, police found a black man with a plaid shirt standing on the named corner, conducted a *Terry* stop, searched the man, and found a gun. The U.S. Supreme Court held that corroboration of description and location of a suspect does not show that an informant has knowledge of "concealed criminal activity" and, therefore, would not provide reasonable suspicion for a *Terry* stop. *Id.* at 272. An anonymous tip must be "reliable in its assertion of illegality, not

[18] **Exhibit A** – Detective McGovern's Affidavit for Search Warrant: 10/11/2002

just in its tendency to identify a determinate person." *Ibid.* It is hard to distinguish the instant case from *Florida v. J.L.*

Further, in granting the Motion to Suppress, Judge Johnson relies on *State v. Robertson,* supra, when he writes that, "(m)ere identification and verification of physical address and identity is not enough to establish informant reliability."[19] In *Robertson,* police received an anonymous tip that a man named "Will" drove a particular type of car and was selling drugs in a given neighborhood. After corroborating the vehicles description and location, along with the suspect's description and name, police made an investigatory stop and detained the suspect until drug dogs could be brought to the scene. The dogs indicated that drugs were in the car and a search produced the drugs. The court, applying the *Gates* "totality of the circumstances" test, held that there was no reasonable suspicion for an investigatory stop when police witnessed no suspicious conduct and when there was no corroboration of information that would demonstrate that the informant was reliable.

As in *Florida v. J.L.* and *State v. Robertson,* the majority of the information from the tip that was corroborated by police in the case at bar served only to identify and locate the suspect. All of the information relating to Avant's description, the description of his car, and the location of his residence was intended and used to identify and locate Avant. This information does little or nothing to establish that the informant was at all reliable in his "assertion of illegality". Also, none of the corroborated

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[19] **Exhibit F** – Ruling of the District Court

identifying information was suspicious in nature. Police witnessed no suspicious activity during their surveillance of Avant's home[20] and no suspicious activity was mentioned in the search warrant. In *Florida* and *Robertson,* corroboration of identifying information provided by an anonymous informant was not, by itself, sufficient to provide reasonable suspicion for an investigatory stop. In the case at bar, as in *Florida* and *Robertson,* no suspicious activity was witnessed and the corroborated information went only to locate and identify Avant. If corroboration of identifying information from an anonymous tip is not sufficient to meet the lower standard of reasonable suspicion, then it is certainly not sufficient to establish probable cause for the search warrant here.

In its writ to the First Circuit, the State attempted to distinguish *Robertson* from the case at bar by stating that the search in the present case was conducted pursuant to a warrant, while the search in *Robertson* was not. This fact, however, only goes to demonstrate the degree to which the warrant in this case lacked probable cause. If an anonymous tip and corroboration of identifying and locating information is not enough to establish reasonable suspicion for an investigatory stop in *Robertson*, it is certainly not enough to establish probable cause for a search warrant here. The state also points out that the second anonymous tip contained a prediction that a middle school would be bombed. It is certainly true that the tip in *Robertson* did not contain any predictions. However, predictive details contained in a tip only help to establish informant reliability and probable cause when those

[20] **Exhibit C** – McGovern's testimony at motion to suppress hearing transcript p. 42

predictions are corroborated. The prediction in this case was not. Any tipster can make predictions, but only those predictions made by reliable informants are likely to come true.

C. One Anonymous Tip can not be Corroborated by Another for the Purpose of Establishing Informant Reliability.

An anonymous tip, by itself, is not sufficiently reliable to establish probable cause for a search warrant. *Illinios v. Gates,* supra. Adding a second anonymous tip to the equation does not demonstrate the first informant's reliability. In his ruling, Judge Johnson cites *State v. Tassin,* 343 So.2d 681, 690 (La. 1976), for the principle that corroboration of information given by an unidentified informant through statements made by other unidentified informants did not establish the first informant's reliability.

In this case, the police did not seek a warrant until they received the second tip, which contained much of the same information as the first tip. The only new information contained in the second tip was the alleged number of pipe bombs in the house and the prediction that Avant was going to bomb the middle school. None of this new information was corroborated. As was the case in *Tassin,* the second tip from the unknown informant does not, by itself, establish the reliability of the first unknown informant. This is especially true in the case at bar when there is a very good chance that the two informants are the same person. As a result, the fact that there were two tips should not be a relevant consideration in the determination of

probable cause for the warrant.[21] One person of unknown reliability and trustworthiness simply can not corroborate another, particularly when it is very likely that they are the same person.

II. THE INFORMANT IN THIS CASE WAS AN ANONYMOUS INFORMANT WHO'S RELIABILITY AND VERACITY MAY NOT BE PRESUMED.

The major premise upon which cases such as *Gates, Florida v. J.L.,* and *State v. Robertson* are based is that the reliability and basis of knowledge of anonymous informers is unknown and, therefore, must be independently established before the standards of probable cause or reasonable suspicion will be met. There is no question that the Crime Stoppers informant in this case was anonymous as contemplated by these cases. The State, however, in citing *State v. Hudgins,* 519 So.2d 400, 405, ftnt. 4, (1988), argues, in its First Circuit writ, that:

> The Louisiana Second Circuit Court of Appeal has recognized that anonymous informants who call Crime Stoppers undoubtedly fall into the

[21] It is important to note that Detective McGovern did not seek out a search warrant after receiving and investigation the first tip. Though we can not claim to read Detective McGovern's mind, the fact that he did not seek a warrant until he received the second tip seems to indicate that he did not believe the first tip and subsequent investigation had established probable cause. As the second tip provided no new corroborated information, it could not help to further establish probable cause for a valid warrant. Detective McGovern's own behavior, as a result, suggests that even he was aware that the tipster's information and the investigation had not provided probable cause for a search warrant.

> category of citizen informants, and therefore should be presumed to be credible.[22]

Despite the State's contention, the Second Circuit recognized no such thing. In footnote dicta, the Court actually stated that:

> Undoubtedly *many* persons calling Crime Stoppers would fall into this category ('anonymous concerned citizens' that should be 'preferred to paid informants'), being treated *more* as citizen informants than merely anonymous tipsters. *Id.* at footnote 4, *Emphasis added.*

"Many persons" does not mean all anonymous informants and "being treated more as citizen informants than merely anonymous tipsters" does not equal a presumption of credibility. The *Hudgins* Court acknowledged this when it found that the informant in their case – who police knew to be reliable because he had made Crime Stoppers calls in the past (and was assigned an identification number) and had given information that was proven to be accurate – was more like a "confidential informant who has furnished reliable information in the past than a concerned citizen or an anonymous tipster." *Id.* at 405. Certainly, an anonymous Crime Stoppers caller that can be identified as having given accurate information in the past is going to be more reliable than a true anonymous informant who is entirely unknown to the police. In the case at bar, the informant was truly anonymous and should not be considered more reliable simply because he chose to make his tip through Crime Stoppers rather than through a letter (as in *Gates*) or through the ATF Hotline (as in *Robertson*). It

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[22] **Exhibit G** – State's Court of Appeals writ at p. 6

is entirely illogical that an informant be presumed more reliable because he made his tip through Crime Stoppers instead of through a call made directly to police.

In *State v. Richmond*, 464 So.2d 430 (1st Cir., 1985), the First Circuit Court made a much more clear and useful distinction between "confidential informers" and "citizen informers". "Citizen informers who are willing to be identified and who purport to have firsthand knowledge carry a high indicia or credibility and reliability in the determination of probable cause." *Ibid.* The "citizen informer is generally a presumptively inherently credible source, unless circumstances exist to indicate otherwise." *Ibid.* As a result, when a citizen informer gives a tip and the affiant believes the informer, probable cause may be established. On the other hand, when "information is provided by an anonymous person who 'tips' police to criminal conduct, there must be some specific showing he is a credible person and his information is reliable." *Ibid.* Unfortunately, there was no specific showing that our anonymous informant was credible source or that his information was at all reliable. As a result, the officer's reliance on the information provided by the tipster, without further corroboration, was not sufficient to establish probable cause. Police, judges, and magistrates must have some reason to believe an anonymous informant before they can act on his or her information. The informant in this case could have been a worthless liar intent on wasting the time of the police and seeing the door of Mr. Avant and Mr. King broken down with a battering ram. If police do not have a reason to believe an informant before acting on his information, then the Fourth Amendment's requirement that the State possess probable cause before

police break down the door of an individual's house is utterly meaningless.

III. THERE IS NO BOMB THREAT EXCEPTION TO REQUIREMENT THAT A WARRANT TO SEARCH A HOME MUST BE SUPPORTED BY PROBABLE CAUSE.

The State argues that the fact that the second tipster accused of Avant of planning to bomb a local middle school makes this case "comparable to an exigent circumstances case."[23] This idea, however, is not reflected by the jurisprudence or good public policy. "The Fourth Amendment has drawn a firm line at the entrance to the home, and a police officer therefore needs both probable cause to arrest or search and exigent circumstances to justify a non-consensual warrantless intrusion into a private premises." *State v. Brisban,* 809 So.2d 923 (La., 2002). Exigent circumstances are an exception to the warrant requirement; they are not an exception to the requirement that police have probable cause to conduct a search of the home. In the case at bar, police did have a warrant. The problem here is that this warrant was invalid because it was not supported by probable cause.

Even if exigent circumstances did permit police to search a home based on something less than probable cause, no such exigency was present in this case. Bomb threats are common and police can not be allowed to search any home based exclusively on the fact that an anonymous tipster claims that the occupants have bombs and will use them. Lt. Rushing, himself, stated that he

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[23] **Exhibit G** – State's Court of Appeals writ, p. 8

receives prank bomb threats all the time and initially dismissed the call he received in this case as such a prank.[24] It is not reasonable that an individual should be able to have their privacy invaded because an anonymous tipster – making a bad faith and false accusation – throws in a bomb threat to encourage police action.

IV. CONCLUSION

A tip from an anonymous informant can not, by itself, establish probable cause for a search warrant. Under *Gates,* the court should use "common-sense" in applying this test and consider things such as the informant's "veracity" or "reliability", and "basis of knowledge". *Gates* at 238. Here, neither the informant's "veracity", "reliability", nor "basis of knowledge" was sufficiently established to provide probable cause for a search warrant. The corroboration of information that could be used only to located and identify Avant does not establish even reasonable suspicion for an investigatory stop. *Florida v. J.L.* and *Robertson.* Knowledge of such information does not demonstrate the informant's reliability or knowledge of "concealed criminal activity". Finally, the fact that police received two anonymous tips adds nothing to the analysis because it is simply not reasonable to use one anonymous tip to corroborate another.

As demonstrated by the holdings of the courts in *Gates, Florida v. JL, Robertson,* and *Richmond,* it is absolutely imperative that police and the issuing magistrate have reason to trust and believe the information provided in a tip

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[24] **Exhibit D** – Rushing's testimony from Motion to Suppress Hearing – transcript p. 75

by an anonymous informant before a warrant can be issued upon probable cause. Nothing that the informant said in the tips and no information gathered by police in their investigation indicated that the informant was reliable in his "assertions of illegality" or that he would have knowledge of "concealed criminal activity". Much of the information provided by the informant and later corroborated by police could be found in a newspaper or phonebook. What is left does not indicate reliability or a basis of knowledge. Using the *Gates* "common sense" approach and considering the "totality of the circumstances", probable cause is not established by an anonymous tip with corroboration of only identifying information and no corroboration of predictive elements or anything else that would demonstrate the informant's basis of knowledge or reliability. In this case, the issuing judge simply did not have a substantial basis to determine that probable cause for the warrant existed. As a result, all evidence seized pursuant to this warrant was obtained in violation of the 4th Amendment to the United States Constitution and Article 1, §5 of the Louisiana Constitution. Accordingly, the Court of Appeals ruling should be reversed and Judge Johnson's ruling suppressing the evidence should be reinstated.

RESPECTFULLY SUBMITTED:

/s/ James E. Boren
JAMES E. BOREN
830 Main Street
Baton Rouge, LA 70802
(225) 387-5786
Bar Roll No. 3252

Law Clerk on Brief:
Christian Henricksen
3L – LSU Law

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, Notary Public, personally came and appeared James E. Boren, who, being duly sworn, deposed that he is counsel for Justin King; that the allegations contained in the attached writ application are true and correct to the best of his knowledge; that he has mailed a copy of the application to the First Circuit Court of Appeal, Post Office Box 4408, Baton Rouge, LA 70821 (225-342-1500) and to opposing counsel Kory J. Tauzin, Assistant District Attorney, 222 St. Louis St., Baton Rouge, Louisiana 70801; and to Judge Donald R. Johnson, 623 Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana 70802 (225-389-4717).

Baton Rouge, Louisiana, this 3 May 04.

/s/ James E. Boren
JAMES E. BOREN

Sworn to and subscribed before me
this the 3 ~~of April~~ May, 2004.

at Baton Rouge, Louisiana.

/s/ [Illegible]
NOTARY PUBLIC

STATE OF LOUISIANA

AFFIDAVIT FOR SEARCH WARRANT

(Filed Nov. 6, 2002)

PARISH OF EAST BATON ROUGE

Detective Chad McGovern #4251, Baton Rouge Police Department, Narcotics Division, affiant now appears before the undersigned Judge authorized to issue warrants in criminal cases, and makes this affidavit, under oath, in support of the issuance of a search warrant to search the following described place: 8348 Highland Road, Baton Rouge, LA, further described as a brown colored wood framed residential dwelling on the west side of Highland Road;

and seize, secure, tabulate and make return therefore according to law the following property or thing(s) which have been used in the commission of, or which constitute evidence of, criminal conduct, to-wit:

Any and all explosives/bombs to include but not limited to equipment, products, electronics, and/or devices that may be used in the construction or manufacturing of explosives, explosive compounds, bombs, explosives devices, or incendiary devices.

Affiant says that he has probable cause to believe that the above-listed thing(s) to be seized are now concealed and located upon the above described premises, based upon the following facts:

Affiant advises the court that on October 09, 2002, affiant received a CrimeStoppers sheet with information concerning Ed Avant. According to the CrimeStopper's information, Avant was growing marijuana plants inside

his residence located at 8348 Highland Road, Baton Rouge. The information advised that Avant was growing the plants in a closet in the residence. Avant maintained in the residence a quantity of steroids and GHB inside the residence as well according to the CrimeStoppers information. The information went on to state that Avant maintained a safe in the residence which contained rifles, handguns, and bombs. The caller described Avant as a W/M, approximately 21 years old, 5'7" tall, weight app. 170 pound. The caller further advised that Avant had previously been arrested for assault, drives a 1996 Chevrolet Z-71 truck, and resides at the residence with two other roommates.

On October 10, 2002, affiant confirmed geographical information conveyed in the CrimeStoppers report. Affiant observed the residence located at 8348 Highland Road, Baton Rouge. Parked at the residence was a blue Chevrolet Z-71 truck backed up to the residence hiding the license plate from view. As affiant observed the residence, two W/M were observed in the front porch of the residence. One of the W/M's on the porch fit the description given by the CrimeStoppers caller to be Avant. The other W/M entered a black Chevrolet truck and departed the residence with the W/M who appeared to be Avant return inside the residence. A Louisiana identification card (LA ID # 8071770) confirmed Avant maintained an address at 8348 Highland Road, Baton Rouge. A registration check by name revealed that Edward Avant owns a blue Chevrolet truck bearing La license V851688. An arrest history revealed that Avant has a previous arrest for Assault, Possession of Fireworks Pyrotechnics, and Disturbing the Peace/Fighting on August 30, 1999.

On October 11, 2002, affiant was contacted by Cpl. Chris Rushing of the Baton Rouge Police Explosives Unit, who received an anonymous telephone call on this date. According to Cpl. Rushing, the caller advsied that a W/M, Ed Avant, had in his possession six pipe bombs at his residence located at 8348 Highland Road, Baton Rouge. The caller advised that Avant had intentions of bombing Kenilworth Middle School on Monday, October 14, 2002. The caller advised Cpl. Rushing that Avant drove a blue Chevrolet Z-71 and was cultivating marijuana inside the residence. The caller again advised that Avant had the intentions of bombing Kenilworth Middle School on Monday.

The undersigned officer(s) request a warrant to search the aforesaid residence (including all structures, vehicles, and other places of concealment on the premises where the thing(s) specified may be found located thereon) for the thing(s) specified in this affidavit.

It may become necessary to conduct the search during the night time, or on Sunday or a holiday, and affiant(s) request that the warrant authorize a night time, Sunday, or holiday search.

/s/ Det Chad McGovern 4251
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 11 DAY OF October, 2002, AT 6:19 A.M. P.M.

/s/ Michael R. Erwin
JUDGE, 19TH JUDICIAL DISTRICT COURT

FILED IN EVIDENCE
EXHIBIT 5-2
DATE 8/07/03
[Illegible]
DEPUTY CLERK

CONTINUATION OF AFFIDAVIT
FOR SEARCH WARRANT

Cpl. Rushing advised that the caller was a male caller that did not wish to leave a name or a telephone number for additional contact. Affiant confirmed information given in the Crime Stoppers report as well as information conveyed to Cpl. Rushing. Affiant request that a search warrant be granted for the residence as well as any and all outbuildings, person(s) present at the time of execution as well as any and all vehicles located at the residence at the time of execution. Due to the sensitive nature of the request for explosives and the potential for danger to the public and executing agents, affiant requests that a no-knock entry for the residence be issued.

/s/ Det Chad McGovern

/s/ [Illegible]

Information Management Resources
1001 West H Street, Suite 6, La Porte, TX 77571
PH: 281-842-8883 Fax: 281-867-9402

[LOGO] CONFIDENTIAL – DO NOT PUT IN CASE FILE
TipSoft Generated Fact Sheet for Law Enforcement Use Only

TIP ID: IMR92401 RCVD: 10/5/2002
CALL TAKER: P.S. TIME: 4:06:00 pm

OFFENSE TYPE	
Narcotics	
DELIVERED TO	LOCATION
Baton Rouge C/S	Baton Rogue 8348 Highland Road

NARRATIVE

SUSPECT: Ed Avant
White Male – 21 YOA – DOB Unknown
5'11" – 170 Lbs – Short Dark Brown Hair – Brown Eyes
Scars – Unknown
Facial Hair – Clean Shaven
Clothing – Unknown
Address – 8348 Highland Road, Baton Rouge, LA
Phones – 761-0509

VEHICLE:
Make – Chevy – Model – Z-71 – Truck
Year – 1996
Color – Blue
LP – Unknown
State/PR – LA

NATURE OF CALL:
The caller advised the subject listed above is believed to be growing Marijuana at his residence. The caller advised they told this information.

RESIDENCE/PHONE & ASSOCIATES:
The caller advised the subject lives at 8148 Highland Road, Baton Rouge, LA with two White Males (unknown information). The caller advised the subject's home number is 761-0509. The caller had NO idea of his associates.

EMPLOYMENT & HANGOUTS:
The caller advised they DO NOT know if the subject is employed. The caller had NO idea where the subject hangs out.

PRIOR CRIMINAL RECORD/WEAPONS/DOGS & GANG ACTIVITY:
The caller advised the subject has previously been arrested in BAton Rouge for Assault. The caller advised the subject owns handguns, rifles and bombs that are located in his room in a safe (unknown location of safe). The caller advised the subject is dangerous. The caller had NO information on animals or gang activity for the subject.

VEHICLE:
The caller advsied the subject drives the vehicle as described above.

OTHER SPECIFIC INFORMATION OBTAINED:
The caller advised the subject has about 15 to 20 Marijuana Plants growing in his closet located in his bedroom. The caller advised they DO NOT know if the subject is selling the Marijuana. The caller advised the subject also has possession of GHB Pills (date rape pill). The caller had NO idea where these pills are located. The caller advised the subject does use these pills to put in women's drinks

and then sleeps with them. The caller advised the subject is also making Steroid Pills and selling them. The caller had NO information about this as well. The caller advised they DO NOT know the subject personally.

The caller had NO other information at this time.

PREVIOUS CALLER: NO
Where – N/A
Code – N/A

The caller learned Crime Stopper by Television

FILED IN EVIDENCE
EXHIBIT 5-1
DATE 8/27/03
/s/ [Illegible]
DEPUTY CLERK

Tip: IMR92401

COUNTER: 646

CODE NUMBER: M558

DATE: 10/5/02

TYPE OF CRIME: NARCOTICS

LOCATION:

VICTIM'S NAME:

SUSPECT'S NAME: ED AVANT

AKA:

SUSPECT'S LOCATION: 8348 HIGHLAND RD.

CITY/STATE: BATON ROUGE, LA

SUSPECT'S DOB:

AGE: 21

SUSPECT'S VEHICLE: 96 CHEV TK BLUE

LICENSE NUMBER: UNKNO

ADDITIONAL INFO: CALLER ADVISED ED AVANT IS GROWING MARIJUANA PLANTS, HAS GHB AND STEROIDS AT 8348 HIGHLAND RD. CALLER SAID ED IS A W/M, 21, 5'11", 170LBS, DARK BROWN HAIR AND LIVES AT LISTED RESIDENCE WITH 2 W/M ROOMMATES. ED HAS 15-20 MARIJUANA PLANTS GROWING IN HIS CLOSET. HE ALSO HAS A SAFE WITH HANDGUNS, RIFLES AND BOMBS IN IT. CALLER SAID HE ALSO HAS GHB AND

	STEROIDS BUT DOES NOT KNOW WHERE HE KEEPS THEM. ED HAS PREVIOUSLY BEEN ARRESTED ON ASSAULT CHARGES.
CRIME STOPPER CONTACT:	HEIDI
INVESTIGATOR:	MCGOVERN
DIVISION:	NARCOTICS
AGENCY:	BRPD

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SECTION "VI"

STATE OF LOUISIANA

VS. NO. 02-03-481

EDWARD N. AVANT AND
JUSTIN W. KING

MOTION TO SUPPRESS

WEDNESDAY, AUGUST 27, 2003

**HONORABLE DONALD R. JOHNSON,
JUDGE PRESIDING**

APPEARANCES:	**FOR:**
MR. CHARLES GREY	STATE OF LOUISIANA
MR. JOHN CALMES	EDWARD N. AVANT
MR. JIM BOREN	JUSTIN W. KING

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LIEUTENANT CHRIS RUSHING

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[56] **EXAMINATION**

BY MR. BOREN:

Q. OFFICER MCGOVERN, MY NAME IS JIM BOREN AND I REPRESENT MR. KING. DO YOU HAVE S-1 IN FRONT OF YOU, THE CRIME STOPPERS TIP SHEET?

A. YES, SIR, I DO.

Q. YOU DO?

A. YES, SIR.

Q. AND WHERE IT SAYS RESIDENCE PHONE AND ASSOCIATES, IT SAYS THAT THE CALLER, WHOEVER IT WAS, HAD NO IDEA OF WHO HIS ASSOCIATES WERE; IS THAT CORRECT?

A. CORRECT.

Q. AND ON THE THIRD PAGE, WHERE IT WAS – THE TOPIC IS "OTHER SPECIFIC INFORMATION OBTAINED," RIGHT? I THINK IT'S THE THIRD PAGE. MAYBE I HAVE THEM OUT OF ORDER.

A. I HAVE IT. IT'S THE SECOND PAGE. I SEE WHAT YOU'RE TALKING ABOUT.

Q. IT SAYS, "THE CALLER HAS NO INFORMATION ABOUT THIS AS WELL," REFERRING TO PUTTING DRUGS INTO PEOPLE'S DRINKS; IS THAT CORRECT?

A. I REALLY DON'T KNOW WHAT THAT SENTENCE IS REFERRING TO.

Q. IT'S PRETTY UNCLEAR WHAT THAT MEANS, ISN'T IT?

A. YES, SIR.

Q. AND THEN IT SAYS, "THE CALLER DOES NOT KNOW THE SUBJECT PERSONALLY"?

A. THAT'S CORRECT.

Q. NOW, MAYBE I MISSED IT AND YOU CAN FIND FOR ME WHERE IN THE CRIME STOPPERS SHEET IT SAYS THAT THIS ANONYMOUS CALLER – WHY THE ANONYMOUS CALLER KNEW THAT? DOES IT SAY ANYTHING ABOUT HOW THE CALLER GOT THIS INFORMATION?

A. NO, SIR.

[57] **Q.** SO THERE'S ABSOLUTELY NO EVIDENCE WHATSOEVER, AS FAR AS YOU CAN FIND IN THE CRIME STOPPERS SHEET, THAT THIS PERSON

HAD ANY PERSONAL KNOWLEDGE OR REASON TO KNOW ANY OF THIS INFORMATION ABOUT THIS HOUSE. AM I CORRECT?

A. I WOULDN'T KNOW HOW THEY WOULD KNOW THIS, NO, SIR.

Q. AND NOT ONLY DO YOU NOT KNOW IT BUT THE PERSON THAT TOOK THIS SHEET DOESN'T KNOW IT, RIGHT?

A. THE CALL TAKER?

Q. YES.

A. RIGHT.

Q. NOW, AT CRIME STOPPERS, DO YOU KNOW IF THEY'RE SUPPOSED TO SAY, HEY, BEFORE WE CAN GO ACT ON THIS, WE NEED TO KNOW HOW YOU KNOW THIS IS TRUE, WHY DO WE THINK YOU'RE RELIABLE. IS THERE ANY CONVERSATION LIKE THAT THAT OCCURS?

A. I'M NOT SURE WHAT OCCURS AT CRIME STOPPERS, SIR.

Q. DO YOU KNOW OF ANY EFFORT WHATSOEVER THAT WAS MADE TO DETERMINE THAT THE CALLER WAS TRUTHFUL?

A. AS FAR AS CRIME STOPPERS?

Q. YES.

A. NO, SIR.

Q. DO YOU KNOW OF ANYTHING THAT WAS DONE TO FIND OUT IF THE CALLER WAS RELIABLE?

A. NO, SIR.

Q. IN OTHER WORDS, THAT THEY DIDN'T HAVE A GRUDGE OR WERE JUST MAD OR CRAZY AS A BED BUG?

A. NO, SIR.

Q. WE HAVE NO WAY OF KNOWING THAT INFORMATION, DO WE?

A. NO, SIR.

Q. NOW, WHAT YOU DID DO, IS YOU TRIED TO CHECK OUT SOME OF THIS YOURSELF, RIGHT?

A. YES, SIR.

[58] **Q.** AND HOW LONG HAVE YOU BEEN IN THE NARCOTICS BUSINESS? MAYBE I SHOULD REPHRASE THAT. HOW LONG HAVE YOU BEEN IN THE NARCOTICS LAW ENFORCEMENT BUSINESS?

A. ABOUT FOUR YEARS.

Q. FOUR?

A. YES, SIR.

Q. AND YOU CONDUCT SURVEILLANCES ROUTINELY, RIGHT?

A. YES, SIR.

Q. AND YOU LOOK FOR TELL-TALE SIGNS OF DRUG ACTIVITY?

A. YES, SIR.

Q. LIKE A LOT OF FOOT TRAFFIC IN AND OUT OF A PLACE, RIGHT?

A. CORRECT. FOR SOMEONE WHO IS DISTRIBUTING DRUGS, YEAH.

Q. OR PEOPLE BACKING THEIR CARS IN SO YOU CAN'T SEE THEIR LICENSE PLATE?

A. NO. THAT'S NOT A NORMAL ONE THAT I RUN INTO, BUT I WOULD ASSUME THAT COULD OCCUR.

Q. BUT THAT DIDN'T HAPPEN?

A. NO, SIR.

Q. AND PEOPLE WITH KNOWN RECORDS FOR BEING DRUG DEALERS COMING IN AND OUT OF THE PLACE, YOU LOOK FOR THAT, TOO, RIGHT?

A. SURE.

Q. I MEAN, YOU WEREN'T EXPECTING TO SEE A DRUG DEAL DURING THE SURVEILLANCE, WERE YOU?

A. NO, SIR.

Q. WHAT WERE YOU LOOKING FOR?

A. JUST TO SEE WHAT SORT OF ACTIVITY WAS OCCURRING AT THE HOUSE. IF SOMEONE WERE GROWING MARIJUANA PLANTS, THEY MAY EXIT THE HOUSE AND GO TO THE BACK OF THE PROPERTY WITH, YOU KNOW, A LARGE BUCKET OF WATER TO GO [59] WATER THEIR PLANTS, OR

SOMETHING LIKE THAT. JUST STANDARD ACTIVITY.

Q. DID YOU SEE ANYTHING LIKE THAT?

A. NO, SIR.

Q. IS IT SAFE TO SAY THAT THROUGHOUT YOUR SURVEILLANCE YOU DID NOT SEE ONE THING THAT WAS CONSISTENT WITH CRIMINAL ACTIVITY?

A. THAT WOULD BE CORRECT.

Q. I DON'T WANT TO PUT WORDS IN YOUR MOUTH. IF THERE'S ANYTHING THAT WAS CONSISTENT WITH CRIMINAL ACTIVITY, YOU TELL ME WHAT IT IS?

A. NO, SIR.

Q. THERE WASN'T?

A. NO, SIR.

Q. DID YOU CHECK TO DETERMINE WHETHER MR. AVANT OR ANYBODY ELSE WAS, YOU KNOW, FLYING IN AND OUT OF TOWN, GOING TO SOURCE CITIES OR THINGS LIKE THAT?

A. NO, SIR.

Q. BUT YOU WERE ABLE TO CONFIRM THAT IT WAS MR. AVANT THAT LIVED THERE AND THAT IT WAS HIS CAR?

A. CORRECT.

Q. AND IS IT SAFE TO SAY THAT THAT'S WHAT YOUR INVESTIGATION TURNED UP?

A. YES, SIR.

Q. NOTHING ELSE?

A. YES, SIR.

Q. THEN I LOOKED AND I CAN'T SEE, MAYBE YOU CAN TELL ME. IS THERE ANY INDICATION WHETHER THE PERSON WHO MADE THIS CRIME STOPPERS TIP IS A MALE OR A FEMALE?

A. ON THE CRIME STOPPER TIP, I DON'T THINK SO.

Q. IS IT YOUR UNDERSTANDING THAT EVERY SINGLE THING THAT THEY LEARNED – THAT CRIME STOPPERS LEARNED IN THE [60] TELEPHONE CALL WAS PUT INTO THIS REPORT AND GIVEN TO YOU?

A. AS FAR AS I KNOW, YES, SIR.

Q. NOW, DID YOU KNOW MR. KING'S NAME BEFORE YOU WENT INTO THE HOUSE?

A. NO, SIR.

Q. YOU HAD NO IDEA WHO WOULD BE IN THERE?

A. NO, SIR.

Q. SO ON OCTOBER 11TH WHEN YOU WENT INTO THE HOUSE AND MR. KING WAS SITTING IN THE LIVING ROOM, WAS HE DOING ANYTHING THAT YOU COULD SEE THAT WAS ILLEGAL OR BREAKING THE LAW AT THAT TIME?

A. NO, SIR.

Q. AND YOU HAD YOUR WEAPON DRAWN?

A. UH-HUH.

Q. AND YOU HANDCUFFED HIM?

A. UH-HUH.

Q. AND I KNOW THIS MIGHT SOUND LIKE A SILLY QUESTION, BUT HE WAS NOT FREE TO GO AT THAT TIME, WAS HE?

A. NO, SIR, NOT AT THAT TIME.

Q. WITH THE GUNS DRAWN AND HANDCUFFED AND A NUMBER OF OFFICERS HAD JUST BATTERED DOWN THE DOOR, IT WAS SAFE TO SAY HE BELIEVED HE WAS NOT FREE TO GO; IS THAT CORRECT?

A. HE WAS BEING DETAINED AT THAT TIME UNTIL THE SEARCH WAS CONDUCTED.

Q. RIGHT. AND YOU DID NOT ARREST HIM AT THAT TIME, DID YOU?

A. NO, SIR.

Q. WELL, LET'S PUT IT THIS WAY. YOU DID NOT SAY "YOU'RE UNDER ARREST," RIGHT?

A. NO, SIR.

Q. DID YOU FRISK HIM?

A. YES, SIR, HE WAS.

[61] **Q.** HE WAS FRISKED AT THE TIME WHEN YOU FIRST WENT IN, AND THAT'S WHEN YOU FOUND THE MARIJUANA IN HIS POCKET?

A. I BELIEVE SO.

Q. HOW MUCH MARIJUANA WAS IN HIS POCKET?

A. I CAN REVIEW MY REPORT. IT WAS, I THINK, .65 OR SOMETHING LIKE THAT, GRAMS.

Q. NOW, I'M EMBARRASSED TO TELL YOU THAT I HAVE A HARD TIME MAKING CONVERSIONS FROM THE METRIC SYSTEM. HOW MUCH DOPE IS .65 GRAMS OF MARIJUANA?

A. I WOULDN'T BE ABLE TO – I MEAN, IT'S NOT A LOT.

Q. YOU CAN ROLL A FEW MARIJUANA CIGARETTES OUT OF IT?

A. I WOULD – I'VE NEVER ROLLED A MARIJUANA CIGARETTE, SO I DON'T KNOW.

Q. BUT YOU'VE SEEN SOME?

A. YEAH.

Q. RIGHT?

A. YEAH.

Q. AND SO AT THAT POINT DID YOU PLACE HIM UNDER ARREST FOR HAVING THE MARIJUANA IN HIS POCKET?

A. I WOULD IMAGINE SO, FOR THE MARIJUANA IN HIS POCKET. THAT'S NOT SOMETHING WE WOULD HAVE TAKEN HIM TO JAIL FOR.

Q. ALL RIGHT. WHEN YOU TALKED WITH – LET'S SEE IF I HAVE THE SEQUENCE OF EVENTS

RIGHT. YOU GUYS GO IN, YOU SECURE AVANT AND KING, YOU PUT THEM IN THE LIVING ROOM. SOMEBODY LOOKS IN ONE OF THE DRAWERS OF THE KITCHEN AND FINDS THESE TWO – THEY'RE METAL PIPES?

A. YES, SIR.

Q. WITH CAPS ON THEM?

A. YES, SIR.

Q. SO AT THAT TIME YOU DON'T KNOW IF THERE'S ANYTHING IN THEM OR NOT, RIGHT?

A. NO, SIR.

[62] **Q.** YOU'RE ASSUMING THAT THERE IS FOR CAUTION PURPOSES, BUT YOU DON'T KNOW WHAT IS INSIDE THOSE TWO PIECES OF METAL WITH THE SCREW TOPS ON THE ENDS, RIGHT?

A. NOT AT THAT TIME, NO.

Q. BUT IT'S CLEAR THAT THERE'S NO OBVIOUS METHOD OF DETONATION OF THOSE DEVICES, RIGHT?

A. NOT THAT – I DON'T KNOW ANYTHING ABOUT THE BOMBS OR ANYTHING LIKE THAT. SO I DON'T KNOW HOW THEY WOULD BE DETONATED. I DON'T KNOW WHAT IT TAKES TO DETONATE ONE. I DON'T KNOW WHAT IT TAKES TO BUILD ONE. SO I WOULDN'T BE ABLE TO ANSWER THAT.

Q. ALL RIGHT. SO ONCE YOU'VE LOCATED THOSE – AND BEFORE THE PIPES WERE FOUND YOU ASKED MR. AVANT – I MEAN BOTH OF THEM –

IF THERE WAS ANYTHING ILLEGAL IN THE HOUSE AND THEY SAID NO?

A. CORRECT.

Q. CORRECT?

A. CORRECT.

Q. FIRST YOU MIRANDIZED THEM?

A. (WITNESS NODS HEAD AFFIRMATIVELY.)

Q. WHEN YOU DID MIRANDIZE THEM, DID THEY SAY, "I WAIVE MY RIGHTS AND AM WILLING TO TALK TO YOU"?

A. NO, SIR.

Q. THEY DID NOT?

A. NO, SIR.

Q. YOU TOLD THEM THEIR RIGHTS, BUT THEY NEVER WAIVED THEM?

A. NO, SIR. THEY JUST STATED THEY UNDERSTOOD THEM.

Q. MY QUESTION IS, DID YOU SAY, DO YOU WISH TO WAIVE THOSE RIGHTS AND MAKE A STATEMENT?

A. NO, SIR.

Q. SO THE FIRST INTERVIEW OR CONVERSATION THAT YOU HAD [63] WITH THEM, ESPECIALLY MR. KING I'M FOCUSING ON, HE SAID HE DIDN'T KNOW OF ANYTHING ILLEGAL IN THE HOUSE, RIGHT?

A. RIGHT.

Q. THEN YOU FOUND THESE PIPES?

A. UH-HUH.

Q. RIGHT?

A. YES, SIR.

Q. AND THEN EVERYBODY WAS TAKEN OUTSIDE?

A. MR. AVANT WAS ASKED WHAT THE PIPES WERE, WHEN THEY WERE LOCATED, AND THAT'S WHEN HE EXPLAINED TO US THEY WERE FILLED WITH POWDER AND THAT'S WHAT THEY WERE.

Q. WHERE WAS MR. KING WHEN MR. AVANT SAID THAT TO YOU?

A. THEY WERE STILL SEATED IN THE LIVING ROOM.

Q. MR. KING DIDN'T SAY ANYTHING AT THAT TIME?

A. NO.

Q. IT WASN'T UNTIL HE WAS IN THE POLICE UNIT LATER ON THAT HE TOLD SOMEBODY THAT HE KNEW ABOUT THEM, RIGHT?

A. YES, SIR.

Q. WHO DID HE TELL THAT TO?

A. I BELIEVE IT WAS TO ME.

Q. YOU?

A. UH-HUH.

Q. SO YOU TOOK HIM TO THE CAR AND YOU ASKED HIM SOME MORE QUESTIONS?

A. RIGHT.

Q. DO YOU KNOW WHAT TIME THAT WAS?

A. NO, SIR. I KNOW IT WAS LATE. I KNOW IT WAS DARK OUTSIDE.

Q. DID YOU HAVE A CRIME SCENE LOG THAT WAS BEING PUT TOGETHER?

A. NOT THAT I'M AWARE OF.

Q. WHO WAS THE FIRST OFFICER ON THE SCENE?

[64] **A.** I DON'T KNOW WHO THE FIRST PERSON THROUGH THE DOOR WAS.

Q. WAS THERE A CRIME SCENE OFFICER IN CHARGE?

A. NO, SIR.

Q. NOBODY WAS IN CHARGE OF THAT?

A. NO, SIR.

Q. YOU ARE AWARE THAT MRS. KING, JUSTIN'S MOM, IS A LAWYER AND CALLED DENNIS SMITH AND SAID, "I DON'T WANT MY KID ANSWERING QUESTIONS"?

A. I THINK SHE TALKED TO HIM ON THE ROAD.

Q. TALKED TO WHO?

A. TO DENNIS. I DON'T THINK – I DON'T KNOW IF SHE CALLED HIM OR NOT. I THINK SHE TALKED TO HIM OUT THERE.

Q. WHEN DID YOU LEARN FROM MR. SMITH, DETECTIVE SMITH THAT JUSTIN KING WAS REPRESENTED BY A LAWYER?

A. THIS WAS AFTER EVERYONE HAD BEEN REMOVED FROM THE HOUSE AND WE HAD STARTED MAKINC PREPARATIONS TO HAVE CORPORAL RUSHING GO INTO THE HOUSE WITH HIS ROBOT.

Q. BEFORE OR AFTER MR. KING TALKED TO YOU ABOUT WHAT HE KNEW?

A. THAT WAS AFTER.

Q. IT WAS AFTERWARDS THAT YOU LEARNED THAT DETECTIVE SMITH HAD HAD A CONVERSATION WITH HIS LAWYER?

A. YES, SIR.

Q. YOU DON'T KNOW WHEN DETECTIVE SMITH HAD THAT CONVERSATION?

A. NO, I DON'T.

Q. DO YOU KNOW THAT DETECTIVE SMITH WAS CALLED ON THE TELEPHONE, THAT WAS A CELL PHONE, AND WE CAN IDENTIFY THE TIMES?

A. NO, SIR, I DON'T.

Q. NOW, LET ME GO BACK IN TIME A LITTLE BIT. WHEN YOU [65] – JUDGE ERWIN WASN'T THE

FIRST JUDGE THAT WAS PRESENTED THIS SEARCH WARRANT, WAS HE?

A. HE WAS THE ONLY ONE PRESENTED THE SEARCH WARRANT, YES, SIR.

Q. WAS JUDGE ERWIN ON DUTY AT THE TIME?

A. NO, HE WASN'T.

Q. DID YOU GO TO THE DUTY JUDGE?

A. YES, WE DID.

Q. WHO WAS THAT?

A. I BELIEVE IT WAS JUDGE FIELDS.

Q. AND WHAT HAPPENED THERE?

A. JUDGE FIELDS TOLD ME THAT HE WOULD HAVE TO REVIEW SOME – HE WOULD HAVE TO REVIEW SOME BOOKS OR SOME LAWS AND FOR ME TO CONTACT HIM BACK IN APPROXIMATELY 20 MINUTES. I CALLED HIM BACK IN 20 MINUTES AND RECEIVED NO PHONE CALL (SIC) AT HIS OFFICE. I ATTEMPTED TO CALL PARISH PRISON TO OBTAIN A PAGER NUMBER OR A HOME PHONE NUMBER TO CONTACT HIM, AND THE ONLY NUMBER THEY HAD FOR HIM WAS HIS OFFICE PHONE.

Q. HOW DID JUDGE FIELDS KNOW WHAT IT WAS THAT HE NEEDED TO RESEARCH? DID Y'ALL TALK ABOUT THIS?

A. YES, SIR. I EXPLAINED TO HIM WHAT THE SITUATION WAS.

Q. THAT YOU HAD TWO ANONYMOUS TIPS SERVING AS THE BASIS FOR A SEARCH WARRANT, RIGHT?

A. RIGHT.

Q. AND HE AT THAT TIME DECLINED TO ISSUE THE WARRANT UNTIL HE HAD DONE SOME RESEARCH?

A. HE SAID THAT HE WOULD HAVE TO LOOK INTO SOME THINGS AND TO CALL HIM BACK IN 20 MINUTES.

Q. AND YOU WERE UNABLE TO CONTACT HIM, SO YOU FOUND ANOTHER JUDGE?

[66] **A.** CORRECT.

Q. NOW, THE KITCHEN – ACTUALLY THERE'S ANOTHER PERSON THAT LIVED IN THIS HOUSE, RIGHT?

A. YES, SIR.

Q. WAS THAT PERSON CHARGED WITH ANYTHING, TO YOUR KNOWLEDGE?

A. NO, SIR.

Q. HE WASN'T CHARGED WITH POSSESSION OF THE PIPE DEVICES?

A. NO, SIR.

Q. WHEN YOU SEARCHED THE PLACE, I GUESS YOU WANTED TO BE ABLE TO ESTABLISH WHO, IF ANYONE, HAD ACCESS TO THAT DRAWER WHERE THE PIPES WERE, RIGHT?

A. YES, SIR.

Q. AND SO DID YOU TAKE ANY FINGERPRINTS FROM THE PIPE OR FROM THE DRAWER?

A. I DIDN'T, NO SIR.

Q. DID ANYBODY?

A. NOT THAT I'M AWARE OF.

Q. TO SEE – BECAUSE IF, FOR EXAMPLE, JUSTIN KING SAYS, "I DIDN'T KNOW THOSE PIPES WERE IN THAT DRAWER," YOU WOULD WANT TO BE ABLE TO SEE IF HE HAD EVER OPENED UP THAT DRAWER, WOULDN'T YOU?

A. I GUESS.

Q. WHO WAS IN CHARGE OF MAKING THE DECISION NOT TO TAKE FINGERPRINTS FROM THE DRAWER?

A. THAT'S NOT A COMMON THING THAT WE DO.

Q. YOU DON'T TAKE FINGERPRINTS –

A. NO, SIR.

Q. – AT CRIME SCENES WHEN THERE'S A PLOT TO BLOW UP THE MIDDLE SCHOOL?

A. NO, SIR.

* * *

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
SECTION "VI"

STATE OF LOUISIANA
VS.
EDWARD N. AVANT AND
JUSTIN W. KING

NO. 02-03-481

MOTION TO SUPPRESS

WEDNESDAY, AUGUST 27, 2003

HONORABLE DONALD R. JOHNSON,
JUDGE PRESIDING

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EXAMINATION

[92] **BY MR. CALMES:**

Q. OFFICER, DO YOU KNOW HOW THE INDIVIDUAL WHO MADE THE ANONYMOUS PHONE CALL TO YOU GOT TO YOU?

A. NO, I DO NOT.

Q. YOU ANSWERED THE PHONE?

A. YES.

Q. AND TELL US WHAT THE INDIVIDUAL SAID?

A. HIS FIRST STATEMENT WAS THAT HE KNEW WHERE SOME BOMBS WERE.

Q. OKAY. WHAT ELSE DID HE SAY?

A. TO BE TOTALLY HONEST WITH YOU, I THOUGHT IT WAS A PRANK.

Q. WHY DID YOU THINK IT WAS A PRANK?

A. WELL, I GET THAT TYPE OF CALL A GOOD BIT FROM FELLOW POLICE OFFICERS AND I THOUGHT THIS WAS ANOTHER ONE OF THOSE.

Q. YOU GET PRANK CALLS ABOUT BOMBS?

A. YES.

Q. SO WHAT DID YOU DO WHEN YOU THOUGHT IT WAS A PRANK?

A. I ASKED HIM THE LOCATION, AND HE GAVE ME THE ADDRESS ON HIGHLAND ROAD.

Q. ANYTHING OTHER THAN THE ADDRESS?

A. HE SPECIFIED THAT THERE WERE SIX OF THEM, WHICH LED ME TO BELIEVE AT THIS POINT MAYBE THIS WASN'T A PRANK; IT WASN'T JUST A FELLOW POLICE OFFICER.

Q. HE SAID THERE WERE SIX AT THIS ADDRESS ON HIGHLAND ROAD?

A. THAT'S CORRECT.

Q. WHAT ELSE DID HE SAY?

A. HE GAVE THE INDIVIDUAL'S NAME, ED AVANT, AND HE SAID THAT HE HAD THE INTENTION OF BLOWING UP KENILWORTH MIDDLE [93] SCHOOL THE FOLLOWING MONDAY MORNING.

Q. ANYTHING ELSE HE TOLD YOU?

A. THE INFORMATION ABOUT THE VEHICLE, THE BLUE CHEVROLET Z-71.

Q. ANYTHING ELSE?

A. AND AT THIS POINT I WAS FRANTICALLY TRYING TO WRITE ALL OF THIS DOWN AND HE SAID, "OH, BY THE WAY" – I WON'T QUOTE HIM BUT AN INDICATION, SORT OF AS AN AFTERTHOUGHT – "BY THE WAY, HE'S GROWING MARIJUANA AT THE HOUSE."

Q. AND THEN HE HUNG UP?

A. AND THEN HE HUNG UP, YES.

Q. HE DIDN'T GIVE YOU ANY PERSONAL INFORMATION ABOUT HIMSELF?

A. NO.

Q. HE DIDN'T TELL YOU HOW HE KNEW THIS INFORMATION?

A. NO.

Q. DID HE TELL YOU HOW MANY MARIJUANA PLANTS OR WHERE THEY WERE?

A. NO.

Q. AND HE DIDN'T TELL YOU WHERE IN THE HOUSE THE BOMBS WERE LOCATED?

A. NO.

Q. AND HE APPEARED TO BE, YOU SAID, MUFFLING HIS VOICE?

A. YES.

Q. TRYING TO DISGUISE WHO HE WAS?

A. THAT'S WHAT I TOOK IT BE, YES.

Q. AND WHAT YOU DID IN THE FORM OF CORROBORATION IS DETERMINED BASICALLY THAT AN EDWARD AVANT LIVED AT THIS ADDRESS?

A. THAT'S CORRECT.

Q. HAD A LOUISIANA DRIVER'S LICENSE?

A. YES.

[94] **Q.** AND HAD BEEN ARRESTED FOR SOMETHING INVOLVING FIREWORKS?

A. THAT'S CORRECT.

Q. ANY OTHER INFORMATION THAT YOU OBTAINED?

A. THAT'S ALL I OBTAINED AT THAT TIME.

Q. YOU DISCUSSED IT WITH OFFICER MCGOVERN?

A. YES.

Q. DID YOU PARTICIPATE IN PREPARING THE AFFIDAVIT FOR THE SEARCH WARRANT?

A. NO, I DID NOT.

Q. DID YOU TELL US THAT OFFICER MCGOVERN DID THAT BY HIMSELF?

A. TO MY KNOWLEDGE. HE MAY HAVE HAD SOME OTHER HELP, BUT I WASN'T PRESENT.

Q. DID YOU INFORM OFFICER MCGOVERN THAT THE ANONYMOUS CALLER WAS TRYING TO MUFFLE HIS VOICE?

A. I DON'T REMEMBER IF I GAVE HIM THAT INFORMATION OR NOT.

Q. ONCE YOU AND MCGOVERN DISCUSSED IT, DO YOU REMEMBER WHAT TIME YOU NEXT BECAME INVOLVED?

A. IT WAS LATER IN THE EVENING. I WANT TO SAY SOMEWHERE AROUND 5:00 OR 6:00 P.M., BUT I'M NOT TOTALLY SURE. THERE WAS QUITE SOME GAP THERE DURING THE SEARCH - WARRANT PREPARATION.

Q. DID YOU GO WHEN THE WARRANT WAS PRESENTED TO THE JUDGE?

A. I WAS DOWN THE STREET, BUT I WAS NOT IN HIS PRESENCE AT THE TIME.

Q. AND I TAKE IT YOU WEREN'T PART OF THE PARTY – DID YOU SEE THE DOOR BEING BUSTED IN WITH A BATTERING RAM?

A. NO, I DID NOT.

Q. HOW LONG AFTER THE OFFICERS HAD GONE IN DID YOU GO [95] IN?

A. MAYBE A MINUTE. AS THEY WERE EXECUTING THE SEARCH WARRANT, I WAS DRIVING INTO THE DRIVEWAY. I WAS MAYBE A MINUTE BEHIND THEM.

Q. BY THE TIME YOU GOT IN, HAD THEY LOCATED THESE TWO PIPES IN THE DRAWER?

A. THE SEARCH WAS GOING ON. NO, I HAD BEEN THERE FOR A FEW MOMENTS BEFORE THE PIPES WERE ACTUALLY FOUND.

Q. AND WHEN YOU OBSERVED THEM, HOW WERE THEY POSITIONED IN THAT DRAWER?

A. BASICALLY LAYING ON THEIR SIDE NEAR EACH OTHER. I CAN'T SAY IF THEY WERE PARALLEL OR CROSSING EACH OTHER, BUT THEY WERE NEAR EACH OTHER CLOSE ENOUGH YOU COULD SEE THEM.

Q. ALONG WITH COMMON ITEMS YOU EXPECT TO FIND IN A KITCHEN?

A. YES.

Q. NO ATTEMPT TO CONCEAL IT?

A. NO, EXCEPT THAT THE DRAWER – EXCEPT INSIDE THE DRAWER.

Q. AND OTHER THAN THE TWO PIPES WITH THE CAPS ON THE END, DID YOU FIND ANYTHING ELSE?

A. NO, I DID NOT.

Q. YOU DIDN'T FIND ANY FUSES?

A. NO.

Q. YOU DIDN'T FIND ANY DETONATORS?

A. NO.

Q. YOU ULTIMATELY DIDN'T FIND ANY INTERNAL DETONATORS EITHER, DID YOU?

A. NO, I DID NOT.

Q. AGAIN, THE PIPES WE'RE TALKING ABOUT IS THE KIND OF PIPE YOU WOULD BUY AT HOME DEPOT OR A HARDWARE STORE?

[96] **A.** YES.

Q. WITH THE LITTLE PRECUT NIPPLES THAT THEY SALE. A NIPPLE IS A SHORT PIECE OF PIPE?

A. RIGHT.

Q. THAT THREADS ON BOTH ENDS?

A. RIGHT.

Q. WITH TWO PIPE CAPS ON BOTH ENDS?

A. RIGHT.

Q. NO HOLES, NO FUSES?

A. NO.

Q. OKAY. I'M A LITTLE UNCLEAR HOW YOU ACTUALLY GOT THE CAP OFF THE END. DID YOU SAY A WATER CANNON?

A. THAT IS THE COMMON NAME FOR OUR BOMB DISRUPTER. IT'S BASICALLY A 12-GAUGE CANNON. IT'S ABOUT 18 INCHES LONG. IT SHOOTS A 12-GAUGE SHELL, AND THE SHELL COMES WITH VARIOUS PROJECTILES. FOR SHOOTING METAL CAPS OFF THE END OF METAL PIPES, WE USE WHAT IS CALLED A FRANGIBLE ROUND, A FRANGIBLE SLUG, WHICH SHOOTS – IT WILL SHOOT THE SLUG TO THE PIPE, IT KNOCKS IT OFF AND THEN THE REMAINDER OF THE SLUG DISINTEGRATES.

SO YOU DON'T HAVE THIS – LIKE A METAL LEAD SLUG OR WHATEVER THAT CAN TRAVEL A GREAT DISTANCE AND CAUSE ANOTHER TYPE OF HAZARD.

Q. WHAT IS THE ACTUAL SLUG MADE OUT OF?

A. IT'S A COMBINATION OF DENTAL PLASTER AND STEEL SHOT, VERY, VERY FINE STEEL SHOT.

Q. YOU'RE NOT WATER BLASTING IT?

A. NO.

Q. YOU'RE SHOOTING IT ACTUALLY –

A. WE WOULD DO THAT AGAINST A SOFT PACKAGE, SAY A BRIEFCASE OR A CARDBOARD BOX, BUT FOR METAL PIPES WE HAVE A SPECIFIC ROUND, WHICH IS THE FRANGIBLE, ALSO KNOWN AS AN AVON ROUND.

[97] **Q.** AND WHEN YOU SHOT THIS PIPE WITH THIS PROJECTILE, NEITHER ONE OF THE PIPES EXPLODED?

A. NO.

Q. DESCRIBE THE FLASH. HOW FAR OUT DID THE FLASH GO?

A. IT WAS A BRIGHT ENOUGH FLASH THAT WE, BEING ON THE OPPOSITE CORNER OF THE HOUSE, COULD SEE IT, COULD SEE THE BRIGHT ORANGE FLASH.

Q. YOU WEREN'T ACTUALLY LOOKING AT IT?

A. NO. WE WERE USING THE HOUSE AS COVER, FOR PROTECTION.

Q. YOU WERE STANDING AROUND THE CORNER, AND YOU WERE AWARE THERE WAS SOME FLASH?

A. YES.

Q. FROM THE 12-GAUGE THAT WENT OFF?

A. RIGHT.

Q. YOU NEVER TALKED TO EITHER ONE OF THE YOUNG MEN ARRESTED?

A. NO, I DID NOT.

Q. YOU DIDN'T TAKE ANY PART IN SEARCHING THE HOUSE?

A. NO, SIR.

Q. YOU JUST HANDLED THE PIPE BOMBS?

A. RIGHT.

MR. CALMES: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: TENDER.

RETURN OF SEARCH WARRANT

Pursuant to search warrant issued to me by the Honorable Judge Michael Erwin, Judge of 19th Judicial District Court, I, Det. Chat McGovern, did on the 11 day of October, 2002, at 1930 o'clock proceed with the assistance of Baton Rouge Police Department and the Bureau of Alcohol, Tobacco, and Firearms to and did search 8348 Highland Road, Baton Rouge, LA and found therein the following:

1.) Two pipe bombs
2.) One bottle of App. 82 grams of Steroids
3.) Marijuana totalling 3.96 grams
4.) U.S. currency totalling $303.00

Finding no further items, I terminated my search at 2315 o'clock, on the 11 day of October, 2002.

I have taken the above described items into my possession and do hereby make my return to the Honorable Judge Michael Erwin on this 23 day of October, 2002.

/s/ Det. C. McGovern 4251

CERTIFICATE OF RECEIPT OF RETURN OF SEARCH WARRANT

This is to certify that I, _____ Judge of the _____ Judicial District Court, _____, Louisiana, have this day received a return of a warrant issued by me to _____, this _____ day of _____, 2___.

CERTIFIED TRUE COPY

Mar. 27, 2003

BY /s/ Jessica [Illegible]
DEPUTY CLERK

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. KW/03/_____

STATE OF LOUISIANA

versus

EDWARD AVANT and JUSTIN KING

ON WRITS TO THE NINETEENTH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA CRIMINAL DIVISION HONORABLE DONALD JOHNSON, JUDGE PRESIDING CRIMINAL DOCKET NO. 02-03-481, SECTION VI

APPLICATION FOR SUPERVISORY WRITS
FILED ON BEHALF OF THE STATE OF LOUISIANA

DOUG MOREAU
DISTRICT ATTORNEY

KORY J. TAUZIN
ASSISTANT DISTRICT ATTORNEY

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
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* * *

> letter's predictions were corroborated by information provided to affiant by federal agent.

The *Gates decision* stands for use of a magistrate's common sense and practicality when making a decision to find probable cause. Corroboration of details of an informant's tip by independent police investigation is valuable in applying a totality of the circumstances in "informant tip" cases. *Id* at 242; 2334.

In *State v. Shepherd*, 470 So.2d 608, 612, this court encompassed the *Gates* holding in confidential informant cases as follows:

> To determine whether the information furnished by a confidential informant provides probable cause for an arrest or a search, a court must utilize a "totality of the circumstances analysis" and consider, **among other things**, the informant's veracity, facts relating to the informant's basis of knowledge and corroboration of the informant's information. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2.d 527 (1983); *State v. Raheem*, 464 So.2d 293 (La. 1985). (emphasis added)

In *State v. Barrilleaux*, 620 So. 2d 1317, 1320 (La. 1993), the Louisiana Supreme Court stated:

> Nevertheless, there are no specific tests to be satisfied by an informant's tip, and the magistrate may issue the warrant when the totality of the circumstances, viewed in a commonsense and non-technical manner, establish 'there is a fair possibility that contraband or evidence of a crime will be found in a particular place.' *Illinois v. Gates*, 462 U.S. 213, 238; 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983).

Therefore, in evaluating a search warrant, the reviewing court's responsibility is "to insure that the judge had a substantial basis for concluding that probable cause existed." *Id.* A reviewing court should give great deference to the determination of the issuing judge, should apply common sense in deciding whether there was a fair probability that the evidence of a crime could be found in the place to be searched, and need only find that the issuing judge had a substantial basis for finding the existence of probable cause. *Bourque*, 622 So.2d at 220, and *State v. Amato*, 96-006 p. 12 (La. App. 1st Cir. 6/30/97); 698 So. 2d

972, 983 (citing *Illinois v. Gates*, 462 U.S. 213, 236, 103 S.Ct. 2317, 2331, 76 L.Ed. 2d 527 (1983)).

The *Barrilleaux* Court, 620 So. 2d 1317, 1320 (La. 1993), also stated:

> A citizen informant who reports criminal activity as a matter of civic duty is a presumptively reliable source, as contrasted with an unnamed underworld character who habitually witnesses and reports criminal activity to police in order to obtain some advantage.

The Louisiana Second Circuit Court of Appeal has recognized that anonymous informants who call Crime Stoppers undoubtedly fall into the category of citizen informants, and therefore should be presumed to be credible. *State v. Hudgins* 519 So.2d 400, 405 *see* ftnt 4.

In the instant case, an anonymous tip was received. The tipster informed Crime Stoppers that Edward Avant, who lived at 8348 Highland Road (phone number: 761-0509) and drove a blue Chevy Z-71 pickup truck was growing marijuana in his closet, was in possession of GHB, and had handguns, rifles, and bombs. The tipster also described Avant as a twenty-one year-old white male with short brown hair and brown eyes. Upon receiving this information from Crime Stoppers, Detective Chad McGovern corroborated every detail that was given to Crime Stoppers. He personally went out to the address on Highland Road and observed the blue Chevy Z-71. He also researched the 8348 Highland Road address and found that the house and the Z-71 truck was registered to Edward Avant.

Two days later, on October 11, 2002, another anonymous tip was received. Lieutenant Chris Rushing of the

Baton Rouge Police Explosives Unit received a phone call informing him that Ed Avant, of 8348 Highland Road, had six pipe bombs stored inside his house. The caller also advised Lieutenant Rushing that Avant planned to blow up Kenilworth Middle School on Monday, October 14, 2002. Further, the caller told Lieutenant Rushing that Avant was growing marijuana in his home.

Thereafter, Lieutenant Rushing contacted Detective McGovern and confirmed the previous Crime Stoppers call. Having corroborated all of the possible information relayed by the two callers, a search warrant was sought.

Judge Michael Erwin, considering the totality of the circumstances and applying a commonsense and non-technical outlook, correctly determined that probable cause did exist and signed the warrant. Judge Erwin, a neutral magistrate, clearly determined from the affidavit that the informant had personal knowledge of defendant's illegal activities. The first tipster provided specific details about the contraband that Avant possessed. The tipster did not simply tell Crime Stoppers that Avant had drugs, rather he informed Crime Stoppers that Avant was growing marijuana in his closet, kept guns in a safe in his room, made steroid pills, and used GHB. Furthermore, the second caller corroborated the first caller's information.

The trial court recognized that the second anonymous call might have been placed by the same person who called Crime Stoppers. However, the second call contained new information. If the same caller placed both calls, then the second anonymous call provides more information and buttresses the notion that the caller had personal knowledge of the defendant, as the second caller reported that Avant had six pipe bombs in his house and planned to

blow up Kenilworth Middle School. On the other hand, if the second caller was different from the first, his call served to corroborate the first caller's information. Therefore, regardless of who phoned in the second tip, probable cause existed.

The trial court relies on *State v. Robertson*, 721 So.2d 1268 (La. 10/20/98), in which the Louisiana Supreme Court found there was no reasonable suspicion for an investigatory stop when there was no corroboration of information to demonstrate informant was reliable in his claim of illegal activity. However, *Robertson* is easily distinguishable from the present case. First, the information in the present case was presented to a neutral magistrate, who considered the totality of the circumstances and determined that probable cause existed. Secondly, in *Robertson*, the informant's information lacked the specific requisite predictive behavior. In the present case, the informant told the police that Avant planned to use the six pipe bombs to blow up the Kenilworth Middle School on Monday, October 14, 2002. This specific information, accompanied by a judge's impartiality clearly distinguishes the present case from *Robertson*.

Further, it should be noted that circumstances in the instant case are inherently more dangerous than the everyday drug surveillance case. This particular case involved explosives that were going to be used to blow up a middle school. Accordingly, the police were not afforded the luxury of sitting back in surveillance and waiting to find more suspicious activity; the public welfare was directly at risk.

This case is comparable to an exigent circumstances case. Had the police not acted swiftly, it is highly likely

that people would have been killed. They simply could not sit on this information waiting for further corroboration that Avant planned to detonate the bombs at the middle school. The officers corroborated every aspect they could have from the information given to them by the two anonymous callers, before they sought the warrant. As exigent circumstances are a long-standing exception to the warrant requirement, they should also be recognized in the totality of the circumstances that Judge Erwin considered in signing the warrant.

Considering the Columbine High School tragedy and other similar school incidents, bomb threats must be taken very seriously. The recent Dutchtown High School arrests in Ascension Parish illustrate how real these disturbing threats can be. Just like the present case, an anonymous informant called the Dutchtown High School to tip off authorities that two students were conspiring to blow up the school. Police and magistrates need to be able to use their judgment to ferret out these potential tragedies. In the present case, Lieutenant Rushing and Detective McGovern did just that. Also Judge Erwin, considering the totality of the circumstances correctly found that probable cause existed; and his judgment should be afforded great deference. Accordingly, the trial court erred when it granted defendant's Motion to Suppress.